

CITY MANAGER EMPLOYMENT AGREEMENT
between
The City of Imperial Beach
and
Tyler Foltz

This Employment Agreement is entered into this 15th day of February 2023 (hereinafter “Effective Date”), by and between the City of Imperial Beach, California, a municipal corporation (hereinafter “City”) and Tyler Foltz, an individual (hereinafter “Officer”) (City and Officer referred to collectively as “Parties”) with respect to the employment of Officer as the City Manager of the City.

RECITALS

WHEREAS, the City requires the services of a City Manager, and Officer has the necessary education, experience, skills and expertise to serve as the City’s City Manager;

WHEREAS, the City Council of the City (the “City Council”) desires to employ Officer to serve as the City Manager of the City;

WHEREAS, the general powers and duties of the City Manager are established by Title 2, Chapter 2.04 of the Imperial Beach Municipal Code (the “Municipal Code”) and by other provisions of the Municipal Code, other ordinances, resolutions, policies of the City Council and State law;

WHEREAS, the Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of Government Code Section 53260 *et seq.*; and

WHEREAS, in consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties desire to determine certain matters relating to the terms and conditions of the employment of Officer as the City Manager for the City as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. Employment

The City hereby employs Officer as its City Manager effective February 21, 2023, and Officer hereby accepts such employment.

2. Commitments and Understandings

A. The Officer’s Commitments

(1) Duties & Authority

(a) Officer shall be the chief executive officer of the City and be responsible to the City Council for the proper administration of all

affairs of the City.

- (b) Officer shall be the Executive Director of the Imperial Beach Redevelopment Agency Successor Agency (the "Agency") and the Imperial Beach Housing Authority (the "Authority"). The City Council has designated and may designate the City Manager as the chief executive of other City-related legal entities. Such other legal entities include the City's financing authority and others.
- (c) Officer shall perform the duties in emergencies as authorized by City policies, the City's emergency plans, the Municipal Code and State law.
- (d) Officer shall perform the duties and responsibilities that are commonly assigned to a City Manager of a general law city in California with a council-manager form of government and the duties set forth in the Municipal Code (including but not limited to Chapter 2.04), the California Government Code, and the City policies and procedures approved by the City Council, as may be amended from time to time.
- (e) Officer shall perform such other legally permissible and proper duties and functions consistent with the office of the City Manager, as the City Council shall from time-to-time assign.

(2) Hours of Work

- (a) Officer is exempt from the provisions of the Fair Labor Standards Act.
- (b) Although Officer is an exempt employee without set hours of work, he is expected to be available at all times and to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position.
- (c) Officer shall spend sufficient hours on site to perform the City Manager's duties; however, Officer has discretion over his work schedule and work location.

B. City Commitments

- (1) The City shall provide Officer with the compensation, benefits, and incentives as specified in this Agreement.
- (2) The City shall provide Officer with office space, staff, equipment, and supplies for the performance of the City Manager's duties.
- (3) The City shall pay for or reimburse Officer for all actual business expenses.

- (4) The City agrees to pay the professional and membership dues and subscriptions on behalf of Officer for participation in national, regional, state, or local associations and organizations including civic organizations, as necessary and desirable for the good of the City, and for Officer's continued professional participation and advancement.
- (5) Within budget limitations, the City agrees to pay the travel and subsistence expenses of Officer for purposes such as official functions, meetings, occasions, short courses, institutes and seminars that are necessary for the good of the City and for the professional development of Officer, including but not limited to, his continued AICP and APA certifications.
- (6) Although Officer is not required to reside in the City of Imperial Beach, Officer is required to reside within the San Diego County boundaries or live within forty (40) minutes of the City of Imperial Beach boundaries.

C. Mutual Commitments

(1) Performance Evaluation

The City Council recognizes that for Officer to respond to its needs and to grow in the performance of the City Manager's job, Officer needs to know how the City Council members evaluate his performance. To assure that Officer gets this feedback, the City Council shall conduct a formal evaluation of Officer's performance once a year on or around February of each year. Within six (6) months of Officer's first date of employment and thereafter annually and when necessary to discuss any concerns or direction in performance, the Council may also conduct informal performance evaluations.

(2) Goals

The City Council and Officer shall jointly define goals and performance objectives they deem necessary for the proper operation of the City in the attainment of the City Council's policy objectives and shall establish relative priority among the various goals and objectives.

(3) ICMA Code of Ethics

The Parties acknowledge that Officer is committed to the ideals of the International City Management Association ("ICMA"). The Parties mutually desire that Officer be subject to and comply with the ICMA Code of Ethics (Attachment A). Officer commits to comply with the ICMA Code of Ethics.

3. Compensation

The City agrees to provide the following compensation to Officer during the term of the agreement:

A. Compensation and Required Employer Costs

(1) Base Salary

- (a) The annual base salary for the position of City Manager shall be \$225,000.
- (b) Officer shall be paid at the same intervals and in the same manner as regular City employees.
- (c) Any merit increase to this annual base salary shall be effective only when approved by the City Council upon completion of a performance evaluation required by this Agreement.
- (d) The City may reduce the annual base salary, compensation or other financial benefits of Officer during the term of this Agreement as part of a general salary reduction in pay among management employees.

(2) Required Employer Costs

- (a) City will pay the employer contribution of Federal Insurance Contributions Act ("FICA") if applicable, including Medicare and Social Security. The City will pay the employee contribution to Social Security on behalf of Officer.

- (b) Unemployment Compensation.

- (c) California Public Employees Retirement System ("CalPERS")

The City contracts with CalPERS for retirement benefits. Officer is entitled to participate in the California Public Employees' Retirement System ("CalPERS") in the 2.7% @ 55 retirement program with the use of the average of Officer's highest one year of salary. Officer will be responsible to pay the entire cost of the employee portion of the CalPERS retirement contribution. Officer will contribute fifty (50%) of employer normal rate cost share.

- (d) The cost of any fidelity or other bonds required by law for the City Manager.

- (e) The cost to defend and indemnify the City Manager as provided in Section 5.D. below.

- (f) Workers' Compensation.

B. Basic Benefits

(1) Holidays

Officer is entitled to those paid holidays usually provided to all other Department Head employees.

(2) Leave Allowance

- (a) Officer shall accrue vacation leave at a rate of 7.7 hours per pay period, which shall accrue on a pro rata basis from Officer's first date of employment with the City. Officer may accrue up to a maximum of three times his annual vacation accrual (600 hours). Once Officer has accrued the maximum allowable vacation leave, Officer will earn no additional vacation leave until Officer uses vacation leave sufficient to bring Officer below the maximum accrual. Officer shall comply with the vacation leave provisions contained in the City's Appointment and Management Benefit Plan and Personnel Rules and Regulations and any other City policies and procedures regarding vacation leave not in conflict with the provisions stated herein.
- (b) Officer shall accrue sick leave at the same rate as other management employees of the City with a maximum accrual of 1,000 hours. If Officer leaves employment without retiring or is separated from employment from City service, fifty percent (50%) of the unused accrued sick leave after five years (5) of service ("vesting time") will be paid out at the Officer's pay rate at the time of separation, and the remaining fifty percent (50%) of unused accrued sick leave shall be forfeited upon termination of this Agreement. The City will provide special consideration to Officer of the "vesting time" since Officer's hire date with City was in 2006 as a general City employee. If Officer retires from City employment after "vesting time," fifty percent (50%) of the unused accrued sick leave shall be converted to CalPERS service credit and the remaining fifty percent (50%) of unused accrued sick leave shall be contributed to a Health Retirement Arrangement (HRA) on behalf of Officer. Officer shall comply with the sick leave provisions contained in the Appointment and Management Benefit Plan and City's Personnel Rules and Regulations and any other City policies and procedures regarding sick leave.
- (c) Officer shall be provided with 80 hours of administrative leave credit annually. On July 1 of each year of this Agreement, Officer shall be provided 80 hours of administrative leave credit, with a maximum accrual of 80 hours of administrative leave. Officer shall comply with the administrative leave requirements and policies applicable to other management employees. Once Officer has accrued the maximum allowable administrative leave, Officer will earn no additional administrative leave until Officer uses administrative leave sufficient to bring Officer below the maximum accrual.
- (d) Vacation Sell-back. Officer shall have the option to sell back accumulated vacation at a maximum of 200 hours per calendar year contingent on a minimum of 100 hours of vacation being maintained by Officer as of the pay period designated for the sell back.

(3) Automobile Allowance

Officer shall be provided a monthly automobile allowance of \$500.00 in exchange for making a vehicle available for Officer's own use and for City-related business and/or functions during, before, and after normal work hours. Employee is responsible for all liability for personal injury and property damages, and for operation, maintenance, and repair of the automobile arising out of Officer's use of the automobile. Officer is also responsible for paying all income tax liability, whether federal or state, arising out of Officer's receipt of the automobile allowance. Officer shall submit proof to the City of a valid driver's license and insurance for the automobile. By Officer making his personal vehicle for use, Officer is not precluded from using City vehicles for City business during, before, and after normal workday on occasion, when appropriate.

(4) Mobile Technology Allowance

Officer shall receive as compensation the sum of \$150.00 per month for use as an allowance for his mobile technology needs including cellular telephone service and computer tablet needs. Officer is responsible for all operation, maintenance, and repair of the cell phone or any other mobile technology devices. Officer is also responsible for paying all income tax liability, whether federal or state, arising out of Officer's receipt of any mobile technology allowance.

(5) Deferred Compensation

The City will make, in equal proportionate amounts each pay period, an annual contribution of \$6,600 into a qualified Section 457 Plan from one of the City approved plans as selected by Officer. Amounts contributed under this Section shall be to the benefit of Officer in accordance with the Deferred Compensation Plan participation agreement. All aspects of this contribution are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of this Section shall be effective if it would violate any provisions of the Internal Revenue Code or its related regulations.

(6) Insurance

- (a) City shall pay the full cost for Officer and Officer's family to participate in the City's medical, dental, and vision insurances in the plan of Officer's choice. If Officer elects not to be covered under the City's health plan, the City will not provide a cash-out benefit.
- (b) The City will provide term life insurance in the amount of three times Officer's annual base salary up to a maximum of \$600,000. Officer shall be responsible for any tax liabilities associated with this benefit.

(7) Annual Physical Examination

Officer shall receive payment for an annual physical examination by the City's selected health care provider or up to \$420.00 that would otherwise qualify under IRS regulations for Flexible Spending Accounts or for approved health club membership fees/dues or medical reimbursements not covered by a Flexible Spending Account.

(8) Benefits that Accrue to Other Employees

Officer shall be entitled to all benefits, rights, and privileges accorded to Department Head employees according to the City's Appointment and Management Benefit Plan as may be established from time to time by City Council, except as otherwise provided in this Agreement. If there is any conflict between this Agreement and any resolution fixing compensation and benefits for Department Head employees, this Agreement shall control.

4. Separation

A. Resignation/Retirement

Officer may resign and/or retire from City service at any time and agrees to give the City at least 90 days advance written notice of the effective date of Officer's resignation, unless the Parties otherwise agree in writing. Upon notice of resignation or retirement and to the extent permitted by law, Officer shall facilitate the least disruptive transition in order to timely complete City projects currently in progress and assist a new city manager in assuming office.

B. Termination & Removal

(1) Officer is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506.

(2) Notwithstanding Imperial Beach Municipal Code Section 2.04.100 and any remaining term as stated in Section 5.1. of this Agreement, the City Council with an affirmative vote of not less than three (3) members in attendance at a lawfully called meeting, may terminate Officer's employment and this Agreement at any time, either with or without cause. Notice of termination shall be provided to Officer in writing. The City is not required to follow the procedures of Imperial Beach Municipal Code Section 2.04.100 prior to any removal.

(3) Officer shall not be terminated, other than for misconduct in office, during the 180-day period next succeeding any general municipal election held in the City at which election a member of the City Council is elected. The 180-day period will start running once a new councilmember is sworn into office.

C. Severance Pay

- (1) In the event Officer is terminated by the City Council during such time that Officer is willing and able to perform the City Manager's duties under this Agreement, then in that event the City agrees to pay Officer a lump sum cash payment equal to 180 days of the then current annual base salary provided that the Officer signs, delivers, and does not revoke a general release agreement provided by the City. Severance pay shall also include payment for six months' worth of health (medical, dental, vision) insurance. After Officer's first annual review by the City Council, the City Council, in its sole and absolute discretion, may consider increasing the amount of severance pay within the limits of the law.
- (2) Notwithstanding any of the above, it is the intention of both parties that all payments required under this Section are subject to and shall be interpreted to comply with the limitations set forth in Government Code Sections 53260 and 53261.
- (3) The Parties agree that the severance benefits due upon termination, if any, and other benefits due upon termination as provided by this Agreement, shall be the only compensation payable to Officer and are intended to compensate Officer for any damages, which could include, among other losses: the loss of the opportunity to transition employment, the loss of alternate employment opportunities, the loss of income, the loss of opportunities for retraining or further education, the erosion of personal investments and savings, the loss of retirement benefits, physical displacement or the loss of a residence, the loss of insurance and medical benefits, expenses for professional counseling, the loss of standard of living including educational opportunities for children, and the resultant emotional distress to Officer and Officer's family.
- (4) In the event Officer resigns or retires from his position with the City, then Officer shall not be entitled to severance pay but will receive all benefits that have already accrued as is typically paid out to other City employees upon resignation.

D. Separation for Cause

- (1) Notwithstanding the provisions of Sections 4.B. and 4.C., Officer may be terminated for cause. As used in this Section, "cause" shall mean only one or more of the following:
 - (a) Conviction of, or no contest plea to, a felony;
 - (b) Conviction of, or no contest plea to, any illegal act involving moral turpitude or personal gain;
 - (c) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of the City Manager's duties;
 - (d) Any act constituting a knowing and intentional violation of the City's Conflict of Interest Code or adopted City Council Policies; or

- (e) Repeated and protracted unexcused absences from the City Manager's office and/or duties.
- (2) In the event the City terminates Officer for cause, then the City may terminate this Agreement immediately, and the City is not required to follow the procedures of Imperial Beach Municipal Code Section 2.04.100. Officer shall be entitled to only the compensation accrued up to the date of termination and such other termination benefits and payments as may be required by law. Officer shall not be entitled to any severance benefits provided by Section 4.C.

5. MISCELLANEOUS PROVISIONS

A. Amendments

This Agreement may be amended at any time by mutual agreement of the City and Officer. Any amendments are to be negotiated, put in writing, and adopted by the City Council.

B. Conflict of Interest

- (1) Officer shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.
- (2) Officer shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to Officer's City employment.
- (3) Officer is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

C. Abuse of Office

Any payment Officer may receive as paid leave pending an administrative investigation, as funds for the legal criminal defense of Officer, or as any cash settlement related to the termination of Officer shall be fully reimbursed to the City if Officer is convicted of a crime involving an abuse of his office or position. "Abuse of office or position" means either of the following:

- (1) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.
- (2) A crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.
- (3) Nothing in this Section entitles Officer to any of the above listed payments described in this Section. This Section shall be interpreted to comply with

the requirements set forth in Government Code Sections 53243-53243.4.

D. Indemnification

- (1) To the full extent of the law, the City shall defend and indemnify Officer, in his capacity as City Manager, and as the chief executive of other City-related legal entities as provided in Section 2.A(1)(b) above, against and for all losses sustained by Officer in direct consequences of the discharge of the City Manager's duties on the City's behalf for the period of Officer's employment, save and except those losses sustained as a result of the willful act or omission of Officer.
- (2) The City shall defend, save harmless and indemnify Officer against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Officer's duties as City Manager. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.
- (3) Whenever Officer shall be sued for damages arising out of the performance of the City Manager's duties, and as the chief executive of other City-related legal entities as provided in Section 2.A(1)(b) above, the City shall provide defense counsel for Officer in such suit and indemnify Officer from any judgment rendered against Officer; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing. This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement to provide protection for any such acts undertaken or committed in Officer's capacity as City Manager, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that Officer may have under the law.
- (4) This Agreement is binding upon and inures to the benefit of the heirs and personal representatives of Officer.

E. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement, and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

F. Laws Affecting Title

In addition to those laws affecting a City Manager, Officer shall have the same powers, rights and responsibilities as a Chief Executive Officer, City Administrative Officer, Administrator, and/or City Administrator as those terms are used in local, state or federal laws.

G. Jurisdiction and Venue

This Agreement shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in San Diego County, California.

H. Entire Agreement

This Agreement represents the sole and complete agreement of the Parties, and no representations have been made or relied upon except as set forth herein. Although the state and local laws referenced in the Agreement are subject to change and are binding upon the Parties without any written amendment to this Agreement, any other terms of this Agreement may be amended or modified only by a written, fully executed agreement of the Parties.

I. Term

This Agreement shall be effective February 15, 2023 with a start date for the City Manager position of February 21, 2023, and shall have a three year term ending on February 21, 2026 ("Initial Termination Date") unless terminated sooner pursuant to Section 4 of this Agreement. Unless the City gives Officer written notice of non-renewal at least ninety (90) days prior to the Initial Termination Date or any subsequent termination dates, the Agreement will automatically renew for successive one-year terms with the first renewal term beginning effective February 22, 2026 and continuing annually thereafter, unless terminated sooner pursuant to Section 4 of this Agreement.

J. Provisions that Survive Termination

Many sections of this Agreement are intended by their terms to survive the City Manager's termination of employment with the City, including but not limited to Section 5.D. This section, and the others so intended, shall survive termination of employment and termination of this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

CITY OF IMPERIAL BEACH

OFFICER

By: _____
Paloma Aguirre, Mayor

By: _____
Tyler Foltz

ATTEST:

By: _____
Jacque Kelly, City Clerk

APPROVED AS TO FORM:

By: _____
Jennifer M. Lyon, City Attorney

ICMA CODE OF ETHICS

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. We believe professional management is essential to efficient and democratic local government by elected officials.
2. Affirm the dignity and worth of local government services and maintain a deep sense of social responsibility as a trusted public servant.
3. Demonstrate by word and action the highest standards of ethical conduct and integrity in all public, professional, and personal relationships in order that the member may merit the trust and respect of the elected and appointed officials, employees, and the public.
4. Serve the best interests of the people.
5. Submit policy proposals to elected officials; provide them with facts, and technical and professional advice about policy options; and collaborate with them in setting goals for the community and organization.
6. Recognize that elected representatives are accountable to their community for the decisions they make; members are responsible for implementing those decisions.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.
8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.
9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.
10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.
11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions pertaining to appointments, pay adjustments, promotions, and discipline.
12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

Adopted by the ICMA Executive Board in 1924, and most recently revised by the membership in June 2020.